

STATE OF MICHIGAN  
COURT OF APPEALS

---

CYNTHIA J. HERRIN,

Plaintiff-Appellant,

v

MILTON R. HERRIN, JR.,

Defendant-Appellee.

---

UNPUBLISHED

February 3, 2004

No. 243095

Oakland Circuit Court

LC No. 01-648081-DM

Before: Owens, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a judgment of divorce. We remand to the lower court to correct its factual findings and to recalculate the child and spousal support orders in light of the corrected factual findings.

Plaintiff claims that the trial court made an erroneous finding of fact. We agree. In a divorce action, we review the trial court's factual findings for clear error. A finding is clearly erroneous if, after a review of the record, this Court is left with a definite and firm conviction that the trial court made a mistake. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992); *McNamara v Horner (After Rem)*, 255 Mich App 667, 669; 662 NW2d 436 (2003).

The trial court stated in its February 4, 2002, Opinion and Order that defendant still owed child support to a child from a previous marriage living in Nevada. This finding is contrary to defendant's testimony. At trial, defendant stated that the child in question was nineteen and was "discharged" from receiving child support. His attorney informed the court that defendant had fully paid all support owed to that child in June 2001. The trial court's view of the evidence is not plausible, and therefore, it must be reversed. *Thames v Thames*, 191 Mich App 299, 302; 477 NW2d 496 (1991). The trial court's erroneous factual finding, that defendant continued to pay child support, affects his income used to calculate the subsequent support orders in this case. (See Michigan Child Support Formula Manual.) Given that the finding affects defendant's calculated income, it is likely to affect the alimony award as well. Therefore, the lower court must recalculate the support orders after correcting its erroneous factual findings.

Plaintiff also contends that the trial court erred in finding that she had extensive language skills and had worked as an interrogator and translator. The record reflects that plaintiff had exposure to French and German in high school. Plaintiff also admitted at trial that she received military training in interrogation and Russian during her service in the army. Under the clearly

erroneous standard, a reviewing court cannot reverse the trial court if its view of the evidence is plausible. *Thames, supra*, 191 Mich App 302. Plaintiff's testimony shows that the trial court's findings are at least plausible, and thus, not clearly erroneous. *McNamara, supra*, 255 Mich App 669; *Thames, supra*, 191 Mich App 301-302.

Plaintiff finally contends that the amount of the alimony awarded to her was not fair and equitable. Given our ruling regarding the trial court's erroneous factual finding, we need not address this issue.

Remanded to correct the factual findings and to recalculate the support orders in light of the corrected findings of fact. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Bill Schuette

/s/ Stephen L. Borrello